

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 227 of 1998

in

APPEAL FROM ORDER No 393 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SARLABEN B BHAVSAR (L.H.OF BHOGILAL T BHAVSAR)THRO'P.O.A.

Versus

DHARMENDRA R PANCHAL

Appearance:

MR PRAFUL J BHATT for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 21/03/98

ORAL JUDGEMENT (Per: B.C.Patel,J.)

In Civil Suit No.5672 of 1996, learned Judge of

the City Civil Court, Ahmedabad, on 17-7-1997 restrained the original defendants Nos.1 and 2 from putting up any construction on sub-plots Nos.15, 24, 25 and 105 of Survey No.139 of Khokhra Mehmedabad. The learned Judge, in his order observed that "the defendant No.2 has admitted that he has purchased the land from the defendant No.1, but, somehow or the other, neither the document nor any proof to that effect has been produced. With what legal authority and legal right he is carrying out the construction is also not justified by the defendant No.2". Thus, it was very clear that there was no legal document before the trial Court indicating transfer of the property. The original defendant No.2, being aggrieved by the order, preferred appeal from order No.393 of 1997 and on 21-8-1997, while disposing of the same, learned Single Judge on this point in para 4, observed as under:

"Thus, it is the case of the appellant-defendant No.2 as well as the defendant No.1 that they shall not put up any construction on the aforesaid three parcels of suit lands which are going to be enclosed by the defendants Nos.1 and 2 by barbed wire fencing. In view of the aforesaid stand of the defendants Nos.1 and 2 that they are not putting up any construction on sub-plots Nos.15, 24 and 25 and that construction already put up on sub-plot No.105 prior to the date of filing of the suit, no further orders are required to be passed in this appeal from order."

.RS 2

#. It is the case put up before the Court by defendant No.2 that defendant No.1 had purchased four parcels of land bearing sub-plot Nos.15, 24, 25 and 105 of Survey No.139 of Khokhra Mehmedabad in the year 1988. The defendants Nos.1 and 2 stated that they do not propose to put up any construction on plot Nos.15, 24 and 25, and that they will enclose the plots by providing wire fencing and that during the pendency of the suit, they will not sell any of the said parcels of land.

#. The defendant No.1 is Kiritbhai Jagjivandas Dattani while the defendant No.2 is Dharmendra R. Panchal. This defendant No.1 subsequently refused to execute Sale Deed for transfer of property referred above in favour of defendant No.2.

#. The grievance made by the petitioner is that in breach of the order passed by this Court, the respondents Nos.1 and 2 are not providing barbed wire fencing. The

petitioner further submits that the respondent No.1 has filed an undertaking before this Court on 3-9-1997 that he will provide barbed wire fencing which is at page 24. However, the respondent No.2 has not filed any undertaking.

#. In para 4 of the petition, averments are made to the effect that the petitioner gave notice, but to whom is not stated. Referring Annexures C and D, it is clear that notice is given only to defendant No.2 and not to defendant No.1. No grievance is made against defendant No.1. Yet, he is joined as a respondent. In reply to the notice, it is pointed out by the defendant No.2 to the petitioner that sub-plots Nos.15,24,25 and 105 of Survey No.139 belong to Kiritkumar Jagjivandas Dattani and he had orally agreed to transfer the property in question. In view of the assurance given by Shri Dattani to execute the Sale Deed, it was stated that fencing will be provided. However, thereafter, said Dattani has refused to enter into the transaction. It is specifically pointed out that persons who are alleged to have agreed before the Court to provide barbed wire fencing have no interest whatsoever in the land. It is pointed out that since they are not the owners of land or the same is not in their possession, the question of putting barbed wire fencing does not arise. We fail to understand that despite a letter written to the petitioner, he has approached this Court by stating that the respondents have committed the contempt of Court. No material is placed before this Court pointing out that the contentions raised in the reply to the notice are false or frivolous. If defendant No.2 is not in possession or not the owner, the question does not arise of providing fencing. In anticipation that property will be transferred, such a statement was made. It is not the case that defendant No.1 or defendant No.2 is making any construction in breach of undertaking.

#. Suffice it to say that, we find no merits in the matter. Earlier, learned advocate has argued the matter and thereafter, it was adjourned for today. In view of this, it was pointed out to the petitioner that question of providing barbed wire fencing does not arise. Yet, these proceedings are initiated. Learned advocate stated that document is executed and property is transferred. If these facts are correct, none prevented from making a statement on oath about the execution of document for transfer of property by defendant No.1 in favour of defendant No.2. It is not possible to accept the contention. It is not the case that defendant No.1 has commenced the work of construction. These proceedings

are nothing but an abuse of process of law. Hence, we direct the petitioner to deposit a sum of Rs.1,000/- in this Court within a period of two weeks. The amount be remitted to Legal Aid, High Court of Gujarat, Ahmedabad. Application stands rejected accordingly.

radhan/